

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 113

March 23, 1995, 3:26 p.m.  
Page S-4443 Temp. Record

## LINE-ITEM VETO/Judicial Exemption

**SUBJECT:** Legislative Line Item Veto of 1995 . . . S. 4. Dole motion to table the Hatch modified amendment No. 407 to the Dole substitute amendment No. 347.

### ACTION: MOTION TO TABLE AGREED TO, 85-15

**SYNOPSIS:** Pertinent votes on this legislation include Nos. 109-112 and 114-115.

As reported, S. 4, the Legislative Line Item Veto Act of 1995, will grant the President enhanced power to rescind spending in appropriations bills, and direct (generally entitlement) spending bills. Rescissions would remain in effect unless Congress passed a disapproval resolution and, if necessary, overrode a presidential veto by the usual two-thirds margin in both Houses. Savings from rescissions would be applied to the deficit.

The Dole substitute amendment would replace the provisions of S. 4 with provisions that would mandate the separate enrollment as bills of line items in all spending bills, all bills containing new or expanded direct spending programs, and all bills containing targeted tax benefits.

**The Hatch modified amendment** to the Dole amendment would exempt line-item appropriations for the judicial branch from separate enrollment. Such items would be enrolled together in a single measure. For purposes of this amendment, those items would be defined as meaning only those functions and expenditures that are currently included in the appropriations accounts of the judiciary as listed and described in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1995 (PL 103-317).

During debate, Senator Dole moved to table the Hatch amendment. The motion to table is not debatable; however, some debate preceded the making of the motion. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

(See other side)

YEAS (85)				NAYS (15)		NOT VOTING (0)	
Republican (46 or 85%)		Democrats (39 or 85%)		Republicans (8 or 15%)	Democrats (7 or 15%)	Republicans (0)	Democrats (0)
Ashcroft	Inhofe	Akaka	Inouye	Abraham	Biden		
Bond	Jeffords	Baucus	Johnston	Bennett	Bumpers		
Brown	Kassebaum	Bingaman	Kerrey	Hatch	Feingold		
Burns	Kempthorne	Boxer	Kerry	Hatfield	Heflin		
Campbell	Kyl	Bradley	Kohl	Helms	Kennedy		
Chafee	Lott	Breaux	Lautenberg	Roth	Pryor		
Coats	Lugar	Bryan	Leahy	Specter	Wellstone		
Cochran	Mack	Byrd	Levin	Thompson			
Cohen	McCain	Conrad	Lieberman				
Coverdell	McConnell	Daschle	Mikulski				
Craig	Murkowski	Dodd	Moseley-Braun				
D'Amato	Nickles	Dorgan	Moynihan				
DeWine	Packwood	Exon	Murray				
Dole	Pressler	Feinstein	Nunn				
Domenici	Santorum	Ford	Pell				
Faircloth	Shelby	Glenn	Reid				
Frist	Simpson	Graham	Robb				
Gorton	Smith	Harkin	Rockefeller				
Gramm	Snowe	Hollings	Sarbanes				
Grams	Stevens		Simon				
Grassley	Thomas						
Gregg	Thurmond						
Hutchison	Warner						

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

## Argument 1:

A line-item veto bill should apply to every part of the Federal Government, including the judiciary. All spending must be open to scrutiny. Line items in the current judicial appropriations bill include \$19.8 million for Death Penalty Resource Centers, \$47.5 million for advertising and rent in the District of Columbia and elsewhere, and \$7,500 for official reception and representation expenses. Rescinding funds from accounts such as these may be prudent from a fiscal standpoint, and would not be synonymous with an infringement on the constitutional prerogatives of the courts. With a \$5 trillion debt, spending in every nook and cranny of the budget needs to be examined and subject to the line-item veto, including spending on the judicial branch. The Hatch amendment should therefore be tabled.

## Argument 2:

The argument that the courts are ill-equipped to defend themselves from budget cuts carries little weight with us because no similar exemption has been proposed for the legislative branch. Congress in recent years has shown little willingness to defend its own budget. If any branch of the Federal Government is threatened by this legislation, it is the legislative branch. A President seeking to pass legislation will quite likely inform Members privately that unless they accede to his demands he will veto large parts of their budgets, knowing that they will be unable to come up with two-thirds votes in both Houses to override those vetoes. Coercion in the political arena is nearly guaranteed; coercion in the nonpolitical judicial arena is unlikely. Further, with the activist courts we now have, any coercive or punitive vetoes would probably be found unconstitutional. The courts can and will defend themselves; Congress, we fear, will not. We therefore oppose this amendment.

**Those opposing the motion to table contended:**

An exception for the judicial branch is uniquely warranted on principle. The judiciary is a separate and co-equal branch of Government that does not have the institutional power to look after itself under separate enrollment. The power to veto separate line-items in its annual appropriations could thus be used as the power to coerce or punish the Federal courts. In one form or another, the executive branch is the largest litigator in the courts. If a major case were pending about which the President felt strongly, he could threaten to make specific line-item cuts if the court did not rule in his favor. Similarly, if the President disagreed with a particular court decision, he could make deep cuts in the judiciary's budget in retaliation. Unless two-thirds of Members voted to override the President's vetoes, he would be able to get away with this behavior.

Senators may believe that this scenario sounds unlikely, but executive coercion of the judicial branch has been exercised before. During the 1930's, the executive branch made unilateral cuts in proposed funding for the courts that forced the firing of court staff and the halving of the secretarial staff's salaries. Those cuts were due to the President's displeasure with court decisions. In 1939, Congress stopped this political interference by passing a law which forbade the President from tinkering with the judicial branch's budget proposal. On an all-or-nothing vote for judicial branch funding, no President is ever likely to be tempted to play political games. Displeasure with a court decision is never going to convince a President to shut down the Federal courts with a veto of all funding. Thus, since 1939 the independence of the courts has been protected.

The Dole amendment would once again place the constitutional independence of the Federal courts at risk from political coercion. Obviously the executive branch would be safe, because the President would not turn on his own office, and Congress would be able to defend itself by exercising its veto authority, but the judicial branch would be subject to the President's moods and political vendettas. Only judges' salaries would be safe from the President's veto pen, because those salaries have specific constitutional protection. Our Founding Fathers well knew that this branch of the Government would always be the weakest, and wrote this protection to preserve the judiciary's independence. With the court system in modern America, making large cuts in the court's budgets could have as great a coercive effect as cutting salaries. Passing this line-item veto bill, therefore, may be violative of original intent.

If the Hatch amendment is accepted it will not mean that the judiciary budget will be free from scrutiny. Each line item in this tiny part of the Federal budget (its appropriations comprise less than of 1 percent of the total budget) will still have to be justified to Congress, and Congress will be free to make amendments. Given past history, though, the President should not be given unilateral power to veto particular line items. The risk of upsetting the constitutional balance of powers is too great, and the actual savings that may result from making cuts in this small portion of the budget are too meager. We therefore urge our colleagues to vote against the motion to table.